

Message Text

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ACTION EB-08

INFO OCT-01 IO-13 ISO-00 FEA-01 STRE-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05 SS-15
STR-05 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01
AF-10 ARA-10 EA-10 EUR-12 NEA-10 /141 W
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P 110835Z NOV 77
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 2942
INFO ALL EC CAPITALS

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PASS STR AND AGRICULTURE
STR PASS CODEL

E.O. 11652: N/A
TAGS: GATT, ETRD, EEC
SUBJECT: GATT PANEL ON EC NFDM MIXING REGULATION

REF: GENEVA 8970

1. SUMMARY: THE CHAIRMAN OF THE PANEL ON THE EC NFDM MIXING REGULATION INFORMED THE US AND EC DELS THAT THE PANEL HAS TERMINATED ITS WORK AND HAS CONCLUDED THAT THE EC'S MIXING REGULATION WAS AT LEAST ON TWO ACCOUNTS INCONSISTENT WITH GATT RULES BUT NOT NECESSARILY FOR THE REASONS ADDUCED BY THE US. THE PANEL WILL FINALIZE ITS REPORT IN THE COURSE OF THE NEXT FEW WEEKS AND WILL SUBMIT IT TO THE JANUARY GATT COUNCIL MEETING. END SUMMARY.

2. AMBASSADOR KAARLEHTO, THE FINNISH CHAIRMAN OF THE GATT PANEL ON THE EC'S NFDM MIXING REGULATION, INVITED THE US AND EC DELS TO THE PANEL FOR A MEETING ON NOVEMBER 9

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IN ORDER TO GIVE THEM AN INFORMAL ACCOUNT OF THE PANEL'S CONCLUSIONS. IN THE PRESENCE OF ALL PANEL MEMBERS AND REPRESENTATIVES OF THE GATT SECRETARIAT, KAARLEHTO STATED THAT THE PANEL HAS REACHED ITS CONCLUSIONS UNANIMOUSLY. THE PANEL'S FINDING, HE SAID, ARE BASED ON LEGAL GROUNDS BUT ALSO ON COMMON SENSE (WHICH WE WERE PRIVATELY TOLD MEANS POLITICAL CONSIDERATIONS). THE PANEL HAS CAREFULLY

EXAMINED THE US AND EC BRIEFS AND ORAL ARGUMENTS BUT ITS CONCLUSIONS ARE BASED ON THE PANEL'S OWN REASONING CONCERNING THE CONSISTENCY OF THE EC NFDM MIXING REGULATIONS WITH GATT RULES.

3. KAARLEHTO'S ORAL EXPOSE OF THE VERY INVOLVED ISSUES WAS NOT EASILY UNDERSTANDABLE. THE FOLLOWING REPRESENTS WHAT WE BELIEVE TO BE THE GIST OF HIS EXPLANATIONS.

4. IN DEFINING THE CONCEPTS PERTINENT TO THE CASE THE PANEL TOOK THE VIEW THAT VEGETAL, ANIMAL AND SYNTHETIC PROTEINS ARE NOT QUOTE LIKE PRODUCTS UNQUOTE IN ACCORDANCE WITH THE MEANING OF THIS TERM IN ARTICLE I AND III OF GATT. HOWEVER THE PANEL DID CONCLUDE THAT SUCH PRODUCTS AND IN PARTICULAR NFDM AND VEGETAL PROTEINS ARE QUOTE DIRECTLY COMPETITIVE AND SUBSTITUTABLE UNQUOTE.

5. THE PANEL CONSIDERED THE PURCHASE REQUIREMENT AND THE SECURITY USED TO ENFORCE IT NOT AS TWO DIFFERENT MEASURES BUT AS ONE SET OF MEASURES.

6. THE PANEL FOUND THAT THE EC MEASURES REPRESENT QUOTE INTERNAL QUANTITATIVE REGULATION UNQUOTE ACCORDING TO THE MEANING OF ARTICLE III/5. HOWEVER, THE PANEL FOUND ALSO THAT THIS INTERNAL QUANTITATIVE REGULATION AS SUCH WAS NOT RELATED TO MIXING, PROCESSING OR USE IN SPECIFIED LIMITED OFFICIAL USE

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AMOUNTS OR PROPORTIONS ACCORDING TO THE SAME ARTICLE. ON THE OTHER HAND, THE PANEL FOUND THAT THE EC MEASURES INTRODUCED PURCHASING OBLIGATIONS ACCORDING TO THE MEANING OF ARTICLE III/1.

7. THE PANEL EXAMINED THE CONSISTENCY OF THE EC MEASURES WITH GATT ARTICLES III/1 AND III/5, I.E. WHETHER THE EC REGULATIONS AFFORDED PROTECTION TO DOMESTIC PRODUCTION. IT FOUND THAT THE EC REGULATIONS AFFORDED PROTECTION TO DOMESTIC NFDM IN A MANNER INCONSISTENT WITH GATT ARTICLES III/1 AND III/5.

8. THE PANEL FOUND THAT DENATURING WAS A SECONDARY ASPECT OF THE EC MEASURES BECAUSE THIS PRACTICE WAS MERELY DESIGNED TO SECURE FINAL UTILIZATION OF THE PRODUCT. THE PANEL ALSO FOUND THAT THE EC REGULATIONS WERE NOT INCONSISTENT WITH GATT ARTICLE III/4 BECAUSE OF ITS VIEW THAT FISH AND MEAT MEALS WERE NOT "LIKE PRODUCTS". HOWEVER IT FOUND THAT THE NON-APPLICABILITY OF THE EC REGULATION TO DOMESTICALLY PRODUCED CORN GLUTEN WAS CONTRARY TO ARTICLE III/4.

9. THE PANEL DID NOT GET INTO THE ARTICLE II ISSUES RAISED BY THE US ON THE BASIS THAT INTERNAL QUANTITATIVE RESTRICTION WAS APPROPRIATELY DEALT WITH IN ARTICLE III, RATHER THAN ARTICLE II. (CHAIRMAN TOLD US PRIVATELY AFTERWARDS THAT THIS WAS DONE TO AVOID THE COMPLEXITY OF DEALING WITH THE ISSUE OF WHAT CONSTITUTES INTERNAL TAX OR CHARGE. THE PANEL ALSO REJECTED THE US ARGUMENT THAT THE SYSTEM VIOLATED ARTICLE I.

10. US DEL (STARKEY) THANKED KAARLEHTO AND THE PANEL FOR THEIR EXTRAORDINARY EFFORT. HE NOTED THAT THE PANEL HAD FOUND THE EC ON AT LEAST TWO ACCOUNTS IN VIOLATION OF GATT. THIS WAS ESSENTIALLY THE US VIEW, THOUGH THE US RATIONALE FOR CLAIMING INCONSISTENCY OF THE EC'S REGULATED OFFICIAL USE

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LATIONS WITH THE GATT DIFFERED FROM THAT OF THE PANEL. HE ADDED THAT WE LOOKED FORWARD TO RECEIVING THE DETAILED REPORT SO THAT WE COULD STUDY THE JURIDICAL ASPECTS AND IMPLICATIONS.

11. EC DEL (MARINUCCI) NOTED THE EXEMPTION OF DOMESTIC

CORN GLUTEN FROM THE EC REGULATION AND ASKED THE PANEL THAT THE PANEL'S REPORT STRESS THE SMALL IMPORTANCE OF THE EC'S CORN GLUTEN PRODUCTION. HE ALSO ARGUED THAT NFDM AND VEGETAL PROTEINS ARE LIKE PRODUCTS BUT WAS CUT SHORT BY THE CHAIRMAN.

12. THE PANEL WILL MEET AGAIN IN THE COURSE OF THE NEXT FEW WEEKS TO PUT THE FINAL TOUCH ON ITS REPORT WHICH WILL BE SUBMITTED TO THE COUNCIL FOR ITS FIRST MEETING IN 1978.

13. DRAFTED BY KOENIG. VANDEN HEUVEL

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